

Testimony of Deirdre M. Smith, Esq. in **Support of**
LD 699, An Act To Create a Kinship Care Navigator Program within the
Department of Health and Human Services

submitted to the Joint Standing Committee on Health and Human Services, March 16, 2021.

Good afternoon, Senator Claxton, Representative Meyer, and other members of the Joint Standing Committee on Health and Human Services. My name is Deirdre M. Smith, and I am a resident of Pownal, Maine. I am an attorney as well as a professor on the faculty of the University of Maine School of Law. I am also the Managing Director of the Law School's legal aid clinic, where I supervise student attorneys who represent low-income Maine residents with matters in federal and state courts and agencies. My testimony in support of LD 699 represents my personal views only and not the position of the University of Maine School of Law or the University of Maine System.

My interest in kinship or relative caregivers initially arose from what I observed while supervising student attorneys in cases in Maine's family and district courts, especially minor guardianship matters. For the past several years, I have researched role and needs of relative caregivers, particularly those caring for children outside of the public child welfare system. I served as a consultant to the Maine Family Law Advisory Committee for its study and recommendations that led to the recent revisions to the Maine Probate Code's minor guardianship and adoption provisions.¹ I also prepared a report for the Maine Office of the Attorney General on the kinship and sibling provisions in the Maine Child and Family Services and Child Protection Act; I recommended specific amendments to those provisions, several of which were enacted by the Legislature in 2018.²

I learned from my work in these contexts that there is an urgent and immediate need to provide more help to kinship caregivers in Maine. A kinship navigator program will not address all of these needs, but it will provide an essential first step. I am particularly supportive of the inclusive definition of "kinship care" in LD 699 because it does not restrict eligibility for such services to relative caregivers who have a formal role in the public child welfare system, such as serving as a kinship placement after a child has been removed from their parents' home. Research indicates that in the United States, for every child in foster care, there are 19 outside the child welfare system who are living with a relative caregiver.³ It is the needs of those families that I have studied most closely and where I think the need for a kinship navigator program is most acute.⁴

As we've seen in headlines in recent years, particularly in light of the opioid epidemic, many Mainers are struggling with substance use disorders and related problems such as homelessness,

¹ P.L. 2017, ch. 402 "An Act to Recodify and Revise the Maine Probate Code."

² P.L. 2017, ch. 411 "An Act To Amend the Child Protective Services Statutes."

³ Generations United, *Kinship Navigator Programs: Tips & Resources*, 4 (available at <https://www.grandfamilies.org/Portals/0/Documents/FFPSA/KN-tip%20sheet%20final2%20%281%29.pdf>).

⁴ See generally Deirdre M. Smith, *Keeping It in the Family: Minor Guardianship As Private Child Protection*, 18 Conn. Pub. Int. L. J. 269 (2019) (available at <https://digitalcommons.maine.edu/cgi/viewcontent.cgi?article=1117&context=faculty-publications>).

poverty, illness, and incarceration. Many people facing such challenges are also parents, and members of a child’s extended family — grandparents, aunts, uncles, older siblings — may need to step in, often in an emergency, to take the child into their care through what’s referred to as “private” or “informal” kinship care.⁵ In some cases, the relatives do so at the request of the Maine Department of Health and Human Services (DHHS), and in others, the family takes the initiative to address the child’s needs. Thousands of Mainers are dedicating an enormous amount of their time, love, and resources to ensuring the safety and security of children in their families. Research findings indicate that more children are being raised by grandparents in the U.S. today than at any time in recent history.⁶

These relative caregivers often find themselves suddenly and unexpectedly in a position of needing to enroll a child in a new school, access health care including behavioral health services, and obtain public benefits. However, relatives providing informal kinship care have little to no support for the role that has been thrust upon them. They are not eligible for foster care subsidies, nor is the State responsible for providing services for the children and their families. Many of those relative caregivers are urged by DHHS to seek legal custody of the children in their care by petitioning for guardianship in a county probate court; however, the State does not provide them with an attorney or detailed information about seeking guardianship.⁷ As a result, these relatives must figure out how to manage all of this on their own. We run the risk that children will not receive all of the care and services they need. Moreover, each of the agencies and offices the relatives must contact becomes responsible for guiding these caregivers.

The burden on Maine’s county probate courts, in particular, is substantial. Maine has seen a substantial increase in petitions for minor guardianship over the past several years.⁸ These petitions are usually filed by a relative, nearly always without an attorney, and quite often at the request of DHHS. The probate registers and other court staff do their very best to assist the relatives who walk through their doors, unsure where to begin or even what guardianship means. Serving as a child’s legal guardian is a substantial undertaking, with extensive responsibilities and requirements. The litigation process leading to appointment as a guardian in itself can be daunting to face alone. At a minimum, these relatives need information about their obligations and their options.

Some relatives have the resources to hire an attorney to help them with the guardianship process. Others may attempt to obtain legal aid or a pro bono attorney to assist them with the case. I spoke recently with Elizabeth Stout, the Executive Director of the Maine Volunteer Lawyers Project (VLP). The number of VLP intakes for people seeking minor guardianship has increased

⁵ Annie E. Casey Foundation, *What is Kinship Care?* (2014) (available at <https://www.aecf.org/blog/what-is-kinship-care>).

⁶ Jill Duerr Berrick & Julia Hernandez, *Developing Consistent and Transparent Kinship Care Policy and Practice: State Mandated, Mediated, and Independent Care*, 68 Child. & Youth Servs. Rev. 24, 24 (2016) (available at <https://escholarship.org/content/qt2gw3b64r/qt2gw3b64r.pdf>).

⁷ See Deirdre M. Smith, *Maine Has More Work to Do to Help Families in Crisis*, Bangor Daily News (Jul. 30, 2019) <https://bangordailynews.com/2019/07/30/opinion/maine-has-more-work-to-do-to-help-families-in-crisis/>

⁸ See generally Deirdre M. Smith, *From Orphans to Families in Crisis: Parental Rights Matters in Maine Probate Courts*, 68 Me. L. Rev. 45 (2016).

sharply just over the past three years. In the 20 intake requests for guardianship cases they received last year, VLP could serve only two people. Among the cases they had to turn away, at least four individuals specifically mentioned that they were seeking guardianship at the direction of the Department.

A recurring theme among relative caregivers and those who work with them is the acute need for access to information and advice about their role what resources may be available to them. The Maine Kinship Advisory Board’s January 2018 report to this Committee described the needs of kinship families in the “informal” kinship system for information and resources. The report notes: “Giving kinship families better information to navigate the complexities of providing care for a child – establishing safety and emotional support, seeking school, medical and respite care, coordinating visitation with birth parents – would be a powerful step in securing the informal child welfare system in Maine.”⁹ For this reason, the report’s *primary recommendation* was the creation of a kinship navigator program in Maine.¹⁰

Kinship navigator programs “offer information, referral, and follow-up services to grandparents and other relatives raising children to link them to the benefits and services that they or the children need.”¹¹ Such programs can also have a broader impact and benefit by “also help agencies and providers tune into the needs of families headed by relatives and provide education to the community about the kinship caregivers and the systems they must navigate.” These programs have been found “to support positive outcomes” in terms of safety, permanency, and well-being for kinship families and the children in their care.¹²

The first kinship navigator programs in the U.S. were launched in 2005 as state and county initiatives to assist relative caregivers navigating the many systems involved with providing kinship care, including child welfare, public benefits, aging services, schools, housing, and health care.¹³ Families outside the public child welfare system are the ones who typically need the most help navigating the “maze of services” that may be available at the local and state levels. Kinship navigator programs can also help families directly involved with the child

⁹ I am glad to provide a copy of the Maine Kinship Advisory Board’s report to the Committee if it is not already available to the Committee.

¹⁰ See also Jill Duerr Berrick & Julia Hernandez, *Developing Consistent and Transparent Kinship Care Policy and Practice: State Mandated, Mediated, and Independent Care*, 68 Child. & Youth Servs. Rev. 24, 31 (2016). (advocating for expanded availability of kinship navigators to improve families’ ability to pursue minor guardianship) (available at <https://escholarship.org/content/qt2gw3b64r/qt2gw3b64r.pdf>).

¹¹ Casey Family Services, What Are Kinship Navigator Programs? (available at <https://www.casey.org/what-are-kinship-navigators>). Many state kinship navigator programs provide extensive public information through websites and guides. For example, see the information and resources provided to kinship caregivers through the Vermont Department of Children and Families <https://dcf.vermont.gov/resources/kin>.

¹² <https://www.casey.org/what-are-kinship-navigators>.

¹³ See “Kinship Navigator Programs” at Grandfamilies.org (American Bar Association Center on Children and the Law and Generations United). <http://www.grandfamilies.org/Topics/Kinship-Navigator-Programs>

welfare system, especially those who are serving as kinship placements for children and seeking to become licensed foster families.¹⁴

Maine does not need to design such a program from scratch. Kinship navigator programs now have a central place in federal child welfare policy,¹⁵ and Congress has backed that up with dedicated funding to help state and local authorities launch and sustain such programs.¹⁶ As a result of this federal funding, there are many excellent models across the country that Maine’s DHHS could use to develop its program. As of 2018, there were more than 70 programs in at least 26 states,¹⁷ and Vermont, New Hampshire, Connecticut, and Massachusetts all have established kinship navigator programs.¹⁸ The American Bar Association’s “Grandfamilies Project” (in conjunction with Generations United),¹⁹ Casey Family Services,²⁰ and the U.S. Department of Health and Human Services²¹ can each provide resources on best practices for developing an effective kinship navigator program to meet the needs of Maine families.

While I do not have expertise in all of the eligibility requirements, my understanding is that the availability of federal funds to support state-based kinship navigator programs has expanded over the past few years.²² This reflects Congress’s recognition of the unique value and unique needs of relative caregivers. I hope that such funding can support Maine’s launch of a new and robust kinship navigator program.

I urge you to vote **Ought-to-Pass on LD 699** so that Maine can provide critically-needed information, guidance, and support to Maine’s kinship caregivers.

¹⁴ Generations United, *Kinship Navigator Programs: Tips & Resources*, 4 (available at <https://www.grandfamilies.org/Portals/0/Documents/FFPSA/KN-tip%20sheet%20final2%20%281%29.pdf>).

¹⁵ Federal law defines kinship navigator programs as programs designed “to assist kinship caregivers in learning about, finding, and using programs and services to meet the needs of the children they are raising and their own needs, and to promote effective partnerships among public and private agencies to ensure kinship caregiver families are served.” 42 U.S.C. 627(a)(1).

¹⁶ Such funding was first available through the Fostering Connections and Increasing Adoptions Act of 2008, Public Law 110-351 (2008).

¹⁷ <https://kinship.msu.edu/State-Programs>

¹⁸ See <https://vermontkinasparents.org/>, <https://www.nhchildrenstrust.org/kinship>, Conn. Gen. Stat. § 17a-98a, <https://www.mass.gov/info-details/kinship-navigator-information>.

¹⁹ <http://www.grandfamilies.org/Topics/Kinship-Navigator-Programs>.

²⁰ <https://www.casey.org/what-are-kinship-navigators>.

²¹ <https://www.childwelfare.gov/pubs/kinshipnavigator>.

²² As a result of the Families First Act, Family First Prevention Services Act of 2018 (42 USC §671(e)(4)(c), additional federal funds for kinship navigator programs were made available in 2018. Maine was apparently one of only 4 states that did *not* seek such funds, although Penobscot Nation was among the eight tribal governments that applied. See Generations United, *Using New Federal Funding Opportunities to Develop Effective Kinship Navigator Programs*, 15 (Dec.6, 2018) (available at <http://www.grandfamilies.org/Portals/0/Documents/FFPSA/Eastern%20Region%20Kinship%20Navigator%20Webinar%20Dec.%20%206%202018%20FINAL.pdf>)

Thank you very much.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Smith".

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